

REMARKS/ARGUMENTS

Favorable consideration of this application in light of the following discussion is respectfully requested.

Claims 7, 13, 19 and 20 are pending in the application, with Claims 8-12 and 14-18 cancelled, Claims 7 and 13 amended, and Claim 19-20 added by the present amendment.

In the outstanding Office Action, Claims 1, 9-10, 12, 15-16 and 18 were rejected under 35 U.S.C. § 112, second paragraph; Claims 7-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nakamura et al. (U.S. Patent No. 5,740,168) in view of Hamalainen et al. (U.S. Patent No. 6,148,209, hereinafter Hamalainen).

Applicants note the present application is the subject of a Petition to Make Special. Thus, Applicants request expedited handling of this application per MPEP § 708.02(VIII).

In view of the cancellation of Claims 8-12 and 14-18, the rejections under 35 U.S.C. § 112, second paragraph, are moot.

Applicants acknowledge with appreciation the personal interview between the Examiner, the Examiner's supervisor, and Applicants' representatives on January 19, 2006. During the interview, the Examiners acknowledged that amending the claims to clarify that the completion message is sent from the mobile to a base station or a base station controlling apparatus appears to overcome the art then of record in co-pending application 10/796,092 (i.e., previously applied Nakamura and Adachi, both applied as a basis of rejection in the present application). For the reasons discussed during the interview and repeated below, Applicants submit that the claims now pending in the present application also distinguish over the art of record. As discussed during the interview, independent Claims 7 and 13 are amended to to clarify that the completion message is sent from the mobile to a base station or a base station controlling apparatus as disclosed in Applicants' originally filed specification.<sup>1</sup>

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<sup>1</sup> Specification, page 26, line 23 through page 29, line 29.

New Claims 19-20 substantially correspond to amended Claims 7 and 13. No new matter is added.

Briefly recapitulating, new independent Claims 7, 13 and 19-20 are directed to a radio communication method of a mobile station and corresponding mobile station apparatus used for a radio communication system employing CDMA (Code Division Multiple Access) for radio access and providing multi-rate transmission. The radio communication system includes a base station controlling apparatus, a plurality of base stations, and a plurality of mobile stations, the mobile station being one of the plurality of mobile stations. The radio communication method of Claim 19 includes receiving at the mobile station code information by message from the base station controlling apparatus or from one of the plurality of base stations, the code information for switching a first code being used to a second code; receiving at the mobile station timing information by message, the timing information including an integer representing a frame at which the first code is switched to the second code at said mobile station; switching at the mobile station from the first code to the second code at the frame represented by the integer; and transmitting from the mobile station a completion message to the base station controlling apparatus or to the one of the plurality of base stations to indicate completion of the step of switching from the first code to the second code. The timing information is configured to enable the one of a plurality of base stations to switch from the first code to the second code at the frame represented by the integer. The invention ensures accurate synchronization of the base station and mobile.<sup>2</sup>

Nakamura describes a method for code switching, including the transmission of a timing signal from a base station to a mobile station.<sup>3</sup> However, Nakamura does not disclose or suggest “transmitting from the mobile station a completion message to the base station controlling apparatus or to the one of the plurality of base stations to indicate completion of

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<sup>2</sup> Specification, paragraphs 121-128.

<sup>3</sup> Nakamura, Figures 420B and 25.

the step of switching from the first code to the second code.” As noted during the interview and as acknowledged by the Examiners, Nakamura only discloses registering the completion of switching from one code to another code by the base station and the mobile station in respective internal controllers.<sup>4</sup> No messages reporting the switching of codes are sent between the mobile and the base station.

Additionally, because Nakamura is explicit that an indication of switching completion is merely stored internally and is not sent from the mobile to the base station, Applicants submit that Nakamura teaches away from Applicants’ claimed invention of “transmitting from the mobile station a completion message to the base station controlling apparatus or to the one of the plurality of base stations to indicate completion of the step of switching from the first code to the second code.” Thus, Applicants submit that any combination that modifies the internal data registration of Nakamura to include the transmission of a completion message from a mobile to a base station is improper.

Additionally, Nakamura fails to disclose or suggest “timing information including an integer representing a frame at which the first code is switched to the second code” as recited in each of Applicants’ independent claims.

Furthermore, Nakamura does not disclose or suggest a base station controlling apparatus as recited in each of Applicants’ independent claims. That is, Nakamura only discloses a base station and a mobile station, without mention or suggestion of a base station controlling apparatus. Thus, Nakamura does not disclose “transmitting the completion message to the base station controlling apparatus.”

Also during the interview, U.S. Patent No. 6,148,209 to Hamalainen et al. (hereinafter Hamalainen) was discussed. While Hamalainen was not of record in the present application

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<sup>4</sup> Nakamura column 7, lines 4-15.

at the time of the interview, Hamalainen has been cited in Applicants' copending application 10/796,090 and is now of record in the present application.

During the interview, Applicants' representatives noted that neither Hamalainen nor Nakamura disclose or suggest transmitting from the mobile station a completion message to the base station controlling apparatus or to the one of the plurality of base stations to indicate completion of the step of switching from the first code to the second code.

As noted above, because Nakamura is explicit that a completion message is not sent from the mobile to the base station, Applicants submit that Nakamura teaches away from Applicants' claimed feature of transmitting a completion message from the mobile station to one of the plurality of base stations or to the base station controlling apparatus to indicate completion of the step of switching a spreading code from the first code to the second code at the one of the plurality of mobile stations. Thus, Applicants submit that modifying Nakamura to be able to send a completion message to an external device (e.g., a base station or a base station controlling apparatus) is an improper hindsight reconstruction of Applicants' invention.

Furthermore, as discussed during the interview, Hamalainen does not disclose or suggest sending a code switching completion message of any kind, let alone a sending a code switching message from a mobile station to a base station or a base station controlling apparatus. Hamalainen only describes the sending of a time slot assignment acknowledgement message.<sup>5</sup> Hamalainen makes no reference to switching of codes or the reporting of a completed code switching. Applicants submit that equating the time slot assignment acknowledgement message of Hamalainen with Applicants' claimed code switching completion message is an improper hindsight reconstruction of Applicants' claimed invention. Thus, assuming *arguendo* that the combination Nakamura and

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<sup>5</sup> Hamalainen column 7, lines 20-26.

Hamalainen is proper, the combination of Nakamura and Hamalainen does not disclose or suggest Applicants' claimed feature of sending a code switching completion message from a mobile to a base station or a base station controlling apparatus.

Furthermore, like Nakamura, Hamalainen does not disclose or suggest Applicants' claimed "timing information including *an integer representing a frame* at which the first code is switched to the second code."

Finally, like Nakamura, Hamalainen does not disclose or suggest Applicants' claimed base station controlling apparatus. That is, Hamalainen only discloses a base station and a mobile station.

MPEP §706.02(j) notes that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Also, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Without addressing the first two prongs of the test of obviousness, Applicants submit that the Official Action does not present a *prima facie* case of obviousness because both Nakamura and Hamalainen fail to disclose all the features of recited in Applicants' claimed invention.

The preceding comments are primarily directed to elements recited in new Claim 19. Applicants submit that Claims 7, 13, and 20 distinguish over the previously discussed references for substantially the same reasons.

Accordingly, in light of the previous discussion, Applicants respectfully submit that the present application is in condition for allowance and respectfully request an early and favorable action to that effect.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



Eckhard H. Kuesters  
Attorney of Record  
Registration No. 28,870

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 06/04)

Michael E. Monaco  
Registration No. 52,041

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